

# ARKANSAS SUPREME COURT

No. CR 08-285

ANDREW L. DAVIS  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered    October 2, 2008

PRO SE APPEAL FROM THE CIRCUIT  
COURT OF DESHA COUNTY,  
ARKANSAS CITY DISTRICT, CR  
2006-33, CR 2006-34, HON. SAMUEL  
B. POPE, JUDGE

AFFIRMED.

## PER CURIAM

In 2006, appellant Andrew L. Davis entered a plea of guilty to aggravated robbery in two separate criminal cases in Desha County.<sup>1</sup> He was sentenced as a habitual offender to 360 months' imprisonment in each case to be served concurrently.

In 2007, appellant filed in the trial court a pro se motion to correct a clerical mistake in the judgment and commitment order. Appellant contended that under the plea agreement, he was to serve his sentences under a "70% rule," wherein he would be required to serve 70% of his sentences before being eligible for parole. He complained that the Arkansas Department of Correction ("ADC") incorrectly applied Act 1805 of 2001. The Act, codified at Arkansas Code Annotated § 16-93-609 (Repl. 2006), would require appellant to serve 100% of his sentences and thus not be eligible for parole. The court below denied the motion, and appellant has lodged an appeal here from the order.

We do not reverse a denial of postconviction relief unless the trial court's findings are clearly

<sup>1</sup>Appellant refers to a third judgment entered in Chicot County. The judgment was not made part of the record on appeal and will not be considered.

erroneous. *Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004). A finding is clearly erroneous when, although there was evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002).

The appellant's argument is based upon alleged conditions of his plea of guilty. However, the record on appeal does not contain the guilty plea hearing transcript nor any documents pertaining to the entry of the guilty plea.<sup>2</sup> The party asserting error has the burden to produce a record sufficient to demonstrate prejudicial error, and this court does not consider evidence not included in the record on appeal. *Smith v. State*, 343 Ark. 552, 39 S.W.3d 739 (2001). Nevertheless, it is clear on the record before us that appellant could not prevail. *See Johnson v. State*, 362 Ark. 453, 208 S.W.3d 783 (2005) (per curiam).

Affirmed.

Wills, J., not participating.

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<sup>2</sup>Appellant's addendum contains two pages from a transcript of a hearing which was abstracted. He contends that this partial transcript is applicable to the instant appeal.